

Correspondence to the SRTF Regarding Law Enforcement Records

Email 1: Terry Francke-General Counsel Californians Aware, 10/23/07

Email 2: Kimo Crossman-San Francisco Sunshine Activist, 10/23/07

Email 3: Kimo Crossman-San Francisco Sunshine Activist, 10/22/07

Email 4: Kimo Crossman-San Francisco Sunshine Activist, 10/22/07

Email 5: Mark Schlosberg-Police Practices Policy Director, 10/30/07

Email 1

Number 1

-----Original Message-----

From: Terry Francke

To: Kimo Crossman

Cc: Allen Grossman; Wayne Lanier; Joe Lynn; Oliver Luby; Marc Salomon; SOTF; Bruce Wolfe, MSW; Dougcoms@aol. com; Erica Craven; Rak0408@Earthlink. Net; Dae is this one and three will followvid Greene; Ben Rosenfeld; bbfischler@aol.com; davezenker@weline2ski.com; dp@boulevards.com; edavis@orrick.com; edrast.sanjose@gmail.com; execdir@unsc.org; jcosby@sanjose.org; jnadler@scu.edu; nwilliams@orloffwilliams.com; phaedra@atwork.org; virholtz@jps.net; James M. Chadwick; mschlosberg@aclunc.org; ClarkWilliams@hotmail.com; Sheila.Tucker@sanjoseca.gov

Sent: 10/23/2007 1:56 PM

Subject: Re: fyi San Jose Sunshine task force tries to write in more access to police records

Kimo et al.,

The California Supreme Court has acknowledged that, as a matter of policy, complete and utter secrecy for investigative records loses its legitimacy once the investigation closes.

"In our view, the matter does appear to deserve legislative attention. Although there are good reasons for maintaining the confidentiality of investigatory records even after an investigation has ended (ante, p. 355), those reasons lose force with the passage of time. Public policy does not demand that stale records be kept secret when their disclosure can harm no one, and the public good would seem to require a procedure by which a court may declare that the exemption for such records has expired."

Williams v. Superior Court of San Bernardino County, 5 Cal. 4th 337, fn.

13 (1993)

The "good reasons for maintaining the confidentiality of investigatory records even after an investigation has ended" are identified on page 355 as "the safety of informants and undercover officers, the integrity of related investigations, and the privacy of persons whose affairs have been investigated but who have not been charged with crimes." Rather than waiting for these interests (protection of which was cited by Sheriff Williams as the justification for total and perpetual secrecy) to wane over the years before releasing records of closed cases, and consistent with the segregation and minimal withholding principles of the CPRA and of Proposition 59, protection for these interests would be best accommodated by targeted redaction.

Redaction would also be consistent with the existing provision in the CPRA law enforcement exemption, which already allows withholding of

particular facts that ordinarily are routinely and promptly disclosable about crimes and arrests if "disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation." The third interest—personal privacy of those not criminally charged—is already protected by the general privacy exemption of the CPRA and, of course, by the privacy right in the California Constitution.

In my experience police secrecy advocates have never been able to articulate justifications for the withholding of closed files beyond these three Williams interests:

- personal safety,
- personal privacy, and
- the integrity of an active investigation, (or more particular matters subsumed by one or more of the three, such as the FOIA "sources and methods" exemption for confidential informants, confidential investigative techniques and procedures, etc.).

As a new investigation proceeds and the fact-gathering elaborates, there is often excellent reason for releasing only minimal information, because the general significance, interrelation and ultimate evidentiary value of what is being compiled is to a greater or lesser degree unknown to the investigators—and quite possibly better known to perpetrators at large, if they but knew what the police have learned. But aside from the Williams interests, once an investigation closes or at any rate can no longer result in a prosecution for whatever reason, there is no more logical or legitimate argument for withholding police records than for any other government records. In a society valuing its freedom, quite the contrary.

Terry Francke
General Counsel
Californians Aware
<http://www.calaware.org> <<http://www.calaware.org>> terry@calaware.org
<<mailto:terry@calaware.org>>

On Oct 22, 2007, at 6:56 PM, Kimo Crossman wrote:

Email 2

Number 2

-----Original Message-----

From: Kimo Crossman

To: 'Tucker, Sheila'; bbfischler@aol.com; 'Bob Brownstein '; 'Brenda Otey '; 'Claudia Boulevard '; 'D. D. S. Karl Hoffower '; davezenker@welive2ski.com; dp@boulevards.com; edavis@orrick.com; 'Edward Rast '; execdir@unsc.org; jcosby@sanjose.org; jnadler@scu.edu; 'Ken Podgorsek '; 'Mary Ann Ruiz '; nwilliams@orloffwilliams.com; phaedra@atwork.org; 'Robinson, Bert'; 'Trixie Johnson '; virholtz@jps.net

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Sent: 10/23/2007 1:53 AM

Subject: RE: 11/1/07 SRTF Meeting Agenda

On phone number - is that home landline phone number? Cell? Work? What if an individual only has a cell phone? What about a skype or voip phone number?

From: Kimo Crossman [<mailto:kimo@webnetic.net>]

Sent: Monday, October 22, 2007 8:38 PM

To: 'Tucker, Sheila'; bbfischler@aol.com ; 'Bob Brownstein '; 'Brenda Otey '; 'Claudia Boulevard '; 'D. D. S. Karl Hoffower '; 'davezenker@welive2ski.com '; 'dp@boulevards.com '; 'edavis@orrick.com '; 'Edward Rast (edrast.sanjose@gmail.com) '; 'execdir@unsc.org '; 'jcosby@sanjose.org '; 'jnadler@scu.edu '; 'Ken Podgorsek '; 'Mary Ann Ruiz '; 'nwilliams@orloffwilliams.com '; 'phaedra@atwork.org '; 'Robinson, Bert'; 'Trixie Johnson '; 'virholtz@jps.net '

Cc: 'Chris Arriola' '; 'Attard, Barbara'; 'Rick Callender' '; 'James Chadwick' '; 'Kyra Kazantzis' '; 'Kirby, Gary'; 'JoAnne McCracken' '; 'mschlosberg@aclunc.org' '; 'John Tennant' '; 'Guerra, Antonio'; 'Bosco, Alicia'; 'Gomez, Armando'; 'Davis, Robert'; 'Kirby, Gary'; 'Attard, Barbara'; 'Chaudhry, Rabia'; 'ClarkWilliams@hotmail.com' '; 'Cogan, Jim'; 'Cortese, Dave'; 'Darlene Bright '; 'David Parker '; 'Fatima Silva '; 'FavoriteHill, Mona'; 'Jeff Bedolla '; 'Kirk Everett '; 'Krya Kazantzis '; 'Le, Maria'; 'Mark Schlosberg '; 'Morrow, Crystal'; 'Ms. Rombeck '; 'Constant, Pete'; 'Richard Konda '; 'Sanjeev

Bery '; 'Scott Soper '; 'Tiernan, Mark'; 'Conly, Barbara'; 'Disher, Dottie'; 'Herrick, Lisa'; 'Manheim, Tom'; 'Price, Lee'; 'Terrazas, Eva'

Subject: RE: 11/1/07 SRTF Meeting Agenda

Reviewing the proposed language under 5.1.1.060 A & C

Email address is not currently a redactable item under CPRA. It would actually be a very unobtrusive way to ask someone a question - if they decline to respond that is always their purgative and if someone harasses someone over email there are already laws against that and there will be written proof if it happens.

The State of Florida says at the bottom of every webpage for their site, Your email address is a public record, if you provide it.

<http://www.myflorida.com/> <<http://www.myflorida.com/>>

On A & C shouldn't this be limited to residential information not for example commercial address/phone/email

Overall the exemption for legitimate Law Enforcement techniques is often stretched very widely - it should be narrowed and the unwarranted invasion of privacy, invade the privacy of another and safety of person exemption's are used all the time to significantly redact information widely. A better test of privacy is that there was not a general expectation of privacy or the actions of the person waived their privacy. If someone sends a letter to a government official that their return address on the stationary or envelope how can someone later claim they thought it was a private communication unless they took steps to keep it that way?

These should be narrowed to take into account (for good or bad) that public and private cameras are on about every block these days and it is very easy to Google someone's name to learn a great deal about them.

Kimo Crossman

San Francisco Sunshine Activist

kimo@webnetic.net <<mailto:kimo@webnetic.net>>

Email 3

Number 3

-----Original Message-----

From: Kimo Crossman

To: 'Tucker, Sheila'; bbfischler@aol.com; 'Bob Brownstein '; 'Brenda Otey '; 'Claudia Boulevard '; 'D. D. S. Karl Hoffower '; davezenker@weline2ski.com; dp@boulevards.com; edavis@orrick.com; 'Edward Rast '; execdir@unscc.org; jcosby@sanjose.org; jnadler@scu.edu; 'Ken Podgorsek '; 'Mary Ann Ruiz '; nwilliams@orloffwilliams.com; phaedra@atwork.org; 'Robinson, Bert'; 'Trixie Johnson '; virholtz@jps.net

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Email 4

Number 4

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Sent: 10/22/2007 7:10 PM

Subject: RE: 11/1/07 SRTF Meeting Agenda

The San Francisco Sunshine Task Force is currently dealing with the question of access to completed Ethics Commission investigative files :

- 1) Are they considered a local police agency?
- 2) Additionally there have been Sunshine requests to the Sheriff's department for routine video monitoring in City Hall which though the taskforce found that this was public record because they did not pertain to an ongoing or even potential investigation (in the same way routine video of a public bus is) the Sheriff refused to provide it claiming it was an investigatory or security file.

On item 1 above here is a current analysis of access to Ethics Commission investigatory files which partially relates to SF Charter too.

<http://www.sfgov.org/site/uploadedfiles/sunshine/meetings/materials/102307item5.pdf>
<<http://www.sfgov.org/site/uploadedfiles/sunshine/meetings/materials/102307item5.pdf>>



October 26, 2007

Sunshine Task Force
Public Records Subcommittee

Dear Subcommittee Members,

I apologize for sending this letter so shortly before your October 29 subcommittee meeting. From the last meeting, I was under the impression that there would not be another subcommittee meeting prior to the November 1 meeting of the full taskforce. I was happy to learn this morning that the committee was meeting and that I would have an earlier opportunity to express the ACLU's views on the draft police records language.

At the outset, I want to express our fullest support for the general direction that you are moving with regard to greater access to police records. As we have mentioned on a number of occasions, openness and transparency are essential to good police/community relations. The current posture of the department with regard to police reports is stark in contrast to that of other jurisdictions in Northern California and other states in the country.

At the same time, I appreciate recent language changes aimed at protecting the privacy of individuals in certain circumstances. Both transparency and privacy are important values and I am glad to see the committee working to craft a draft ordinance that seeks to balance the two.

As I mentioned at the last meeting, I still have a few suggested changes, which I urge you to consider:

- (1) Modifying 5.5.1.020(B)(2). The language currently reads "the successful completion of the investigation or a related investigation." The department and the district attorney's office have publicly-taken the position that the release of any police report could potentially impact other investigations. I am concerned that this exemption could be used broadly to withhold documents. I suggest the language be changed to: "the successful completion of the investigation or a particular related and identifiable investigation."
- (2) Including language to redact the names of arrestees in police reports once either (a) the police department make a determination not to refer the case to the district attorney for prosecution (see PC 849.5); (b) the district attorney has made a decision to not file criminal charges; (c) criminal charges were

M. QUINN DELANEY, CHAIRPERSON | ROBERT CAPISTRANO, SUSAN FREIWALD, LISA HONIG, NATALIE WORMELI, VICE CHAIRPERSONS | NANCY PEMBERTON, SECRETARY/TREASURER
MAYA HARRIS, EXECUTIVE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | ERIKA CLARK, COMMUNICATIONS DIRECTOR | JUSTINE SARVER, ORGANIZING DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR
ANN BRICK, MARGARET C. CROSBY, TAMARA LANGE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS | NATASHA MINSKER, NICOLE A. OZER, MARK SCHLOSBERG, POLICY DIRECTORS
STEPHEN V. BOMSE, GENERAL COUNSEL

never filed and the statute of limitations has run; (d) criminal charges were filed but the case was dismissed without a conviction and without a police report being included in the court file; (e) criminal charges were filed but the case resulted in a factual finding of innocence (PC 851.8), a diversion program was successfully completed (see e.g. PC 1000), or probation has been successfully completed (PC 1203.4). While names of arrestees are provided in the summary information required by 6254(f), with the passage of time and the resolution of a case without conviction, greater privacy concerns attach. In these cases, police reports should still be released, but the arrestees' names should be redacted.

- (3) Protections against the use of the ordinance to be used to build criminal histories on individuals. A 2006 California Attorney General opinion prohibited district attorney offices from releasing local criminal histories – arrest reports – to the public due to privacy concerns. We share these concerns, particularly with regard to unsubstantiated arrests that do not result in conviction.

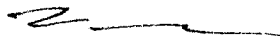
On October 12, 2006, the Governor signed SB 690, which allowed local summary criminal history information to be released by a district attorney office “if release of the information would enhance public safety, the interest of justice, or the public’s understanding of the justice system and the person making the request declares that the request is made for a scholarly or journalistic purpose.”

I urge the committee to consider, in light of this legislation, whether it is possible to guard against individual request for criminal history information in the ordinance – particularly in cases where arrests do not result in conviction.

I look forward to talking with you about these points and hearing any potential concerns. I am not sure whether I will be able to attend the committee meeting Monday, but I can be reached at 415-621-2493 ext. 316. Also, this letter also does not address the draft investigatory records language, which I hope to weigh in on as well.

Thank you again for your work on this. The draft is clearly moving in the right direction.

Sincerely,



Mark Schlosberg
Police Practices Policy Director
ACLU of Northern California